

Avis Mello

v.

Town of Wolfeboro

Docket No.: 16557-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$1,086,600 (land \$503,600; buildings \$583,000) on a .76-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or were unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessments were higher than the general level of assessment in the municipality. Id. While we find the Taxpayer's agent didn't carry this burden, the board is ordering an abatement based on corrections to the Property as of April 1, 1995.

The Taxpayer argued the assessment was excessive because:

- (1) there are errors on the assessment-record card;

- (2) the building and landscaping were incomplete on April 1, 1995;
- (3) the value for the boathouse and the 9.0 land condition factor are excessive and disproportionate;
- (4) the house is overbuilt for the neighborhood;

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- (5) a January 1996 appraisal estimated the completely finished value to be \$822,000; this value should be depreciated by \$25,000 for unfinished building and landscaping features; and
- (6) the construction contract was for \$414,000.

The Town recommended a revised assessment of \$1,066,800 to correct for the lack of air conditioning and sheds and argued the revised assessment was proper because:

- (1) the Taxpayer did not provide documentation of the unfinished areas of the Property;
- (2) the construction contract may not accurately reflect all the costs;
- (3) the Property is located in a premiere neighborhood in Wolfeboro;
- (4) the land condition factor reflects the landscaping, docks and other waterfront improvements and the view; and
- (5) the Taxpayer's comparables are in inferior locations.

Board's Rulings

Based on the evidence, the board finds the proper 1995 assessment to be \$1,056,800 (land, \$493,600; buildings \$563,200). This revised assessment is based on the Town's correction of removing the air conditioning and the three sheds and the board's finding that some value attributable to landscaping

(\$10,000) not completed as of April, 1995 should be deducted.

If the Taxpayer's agent, Mr. Lutter, intends the board to find his evidence credible, he should come better prepared, more knowledgeable on the Property, or have his client present for questioning.

In this case, the board placed no weight on the Taxpayer's appraisal because: 1) the adjustments were not reasonably described and documented (locational adjustments, quality of construction, boathouse value, etc.); 2) the addendum page describing the adjustments and the approaches to value (specifically the cost approach) is from a different appraisal and does not relate to the Property; and 3) the comparables were generally smaller and of inferior quality.

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The board was unable to place any weight on the construction contract (TP Ex. #3) because only the general provisions of the contract were included and not the breakdown of the schedule of values and any change orders. Consequently, the board was unable to determine what the actual costs to construct the various improvements were.

Mr. Lutter stated the Taxpayer had told him that there was approximately \$15,000 of unfinished plumbing fixtures, windows and kitchen cabinets as of April 1, 1995. However, no documentation was submitted to either the Town (after it was requested of the Taxpayer by the Town at the time of the abatement application) or the board at the hearing. Either the Taxpayer should have been present to testify directly on this issue or concrete evidence (photographs as of April 1, 1997 or invoices) should have been submitted. Likewise, the board gave Mr. Lutter's argument that the boathouse

was not worth \$100,000 no weight because he did not provide any document to contradict the Taxpayer's estimate on the building permit and the Taxpayer's appraiser's estimate of \$100,000 for the boathouse. He simply recited second-hand estimates of the Taxpayer without any documentation or the Taxpayer being present.

The board finds Mr. Lutter's argument of reducing the land value by \$10,000 for unfinished landscaping was reasonable based on the submitted invoices (TP Ex. #2).

Barring the adjustment for the unfinished landscaping, the board finds the Town's general description of the neighborhood and site adequately justified the Property's condition factor. Mr. Lutter's arguments that the Property was overbuilt for the neighborhood dealt primarily with only the abutting properties. The Property appears to be in keeping with the tear-down and reconstruction trend in the older areas of the neighborhood and in keeping with the general neighborhood of the Embassy Estates development. In the

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future, the Town would be advised to provide evidence of the sales and assessment information it testified to so as to assist the board in understanding the general market of the neighborhood.

If the taxes have been paid, the amount paid on the value in excess of \$1,056,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1996 in excess of \$1,066,800 based on the good faith adjustment of the landscape being

completed. Until the Town undergoes a general reassessment, the Town shall use the 1996 assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Avis Mello, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Dated: March 12, 1997

Valerie B. Lanigan, Clerk

Avis Mello

v.

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ORDER

The board denies the Taxpayer's motion received on April 7, 1997. The Taxpayer's agent (Mr. Lutter) continues to ignore the big picture in this appeal. Mr. Lutter did not submit evidence relative to the property's total market value - only evidence of its various components. Further, much of the evidence he did submit was incomplete or conflicting with other evidence (incomplete construction contract see page 3 of board's March 12, 1997 decision; Taxpayer's statement of boathouse costs \$35,000 to \$40,000 contradicted by his estimate on his building permit, his appraiser's adjustment for the presence of a boathouse and the Town's assessment of the boathouse).

Mr. Lutter also argues that the condition factor of 9.00 is unreasonable because it does not correspond to the landscaping. We agree it does not correspond only to the landscaping, but he failed to show it was unreasonable when viewed in the context of the whole property. The condition factor

corresponds to many other things other than landscaping, such as general market appeal, view, desirability as developed, etc. Mr. Lutter faults the Town for not submitting information to support the 9.00 condition factor but he fails to fulfill the Taxpayer's burden of submitting adequate evidence that the Town's assessment of \$1,086,600 (indicated market value of \$953,150) is excessive.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Avis Mello, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Date: April 22, 1997

Valerie B. Lanigan, Clerk

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